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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re T.V., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.C.,

Defendant and Appellant.

E054761

(Super.Ct.No. RIJ1101169)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed.

Brent Riggs, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,  
for Plaintiff and Respondent.

T.C. (Mother) is the mother of T.V., who was 14 years old at the time of the challenged jurisdiction and disposition orders. Mother contends the juvenile court's jurisdiction and disposition orders should be reversed because: (1) the juvenile court conducted the disposition hearing in T.V.'s absence despite her request to be present and without inquiring as to whether she was given the opportunity to attend; (2) insufficient evidence supports removing T.V. from mother's care; and (3) the Riverside County Department of Public Social Services (DPSS) sent incomplete ICWA<sup>1</sup> notices and failed to notify all required Indian tribes. As discussed *post*, we find the first two arguments to be without merit. However, we agree that the ICWA requirements were not satisfied, and we therefore conditionally reverse and remand for further proceedings in compliance with ICWA.

### **FACTS AND PROCEDURE**

On August 15, 2011, sheriff's deputies arrested a pedestrian in Mother's neighborhood for possessing methamphetamine. The pedestrian told the deputies that he or she had purchased the methamphetamine from Mother. On August 23, 2011, sheriff's deputies served a search warrant on Mother's home while T.V. was present. Mother appeared to be under the influence of methamphetamine. The deputies found 6 grams of marijuana, a trace of methamphetamine in a plastic bag, what appeared to be drug packaging supplies, and a wet, torn plastic bag near the running faucet in the kitchen sink. Under questioning, T.V. told the deputies that Mother "smokes weed" in the house with

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<sup>1</sup> ICWA is the Indian Child Welfare Act of 1978. (25 U.S.C. § 1901 et seq.)

her present and that many people frequently come and go from the house, often not staying for more than five minutes. The home had dirty dishes and clothes throughout and dog and rat feces were present on the floors, couches and in the bedrooms. Rotten food was found in the kitchen and on top of the refrigerator. DPSS was called to the scene to detain T.V. Mother was arrested for possessing marijuana (Health & Saf. Code, §11357, subd. (b)), being under a controlled substance (Health & Saf. Code, § 11550, subd. (a)), and child endangerment (Pen. Code, § 273a, subd. (a)).

The detention hearing was held on August 26, 2011. T.V. was present, represented by counsel. At the conclusion of the hearing, after the juvenile court ordered T.V. detained, the court asked, “Did we want to have the minor back at the next hearing?” T.V.’s counsel responded, “She would like to be back at the next hearing to meet Ms. Sinclair.” Ms. Sinclair was T.V.’s actual appointed counsel, for whom another attorney made a special appearance.

On September 15, 2011, the social worker told T.V. about her right to be present at the jurisdiction and disposition hearing. T.V. stated that she wanted to be present. The social worker told T.V. that arrangements would be made for her to attend.

The jurisdiction and disposition hearing was held on September 27, 2011. T.V. was not present. Her appointed attorney was present, but submitted on the reports and DPSS recommendations. Mother’s attorney declined to present any evidence. The juvenile court took jurisdiction over T.V., found “good notice under the Indian Child Welfare Act” and removed T.V. from her parents’ custody. The court also ordered

Mother to participate in reunification services and set the six-month review hearing for March 27, 2012. This appeal followed.

## **DISCUSSION**

### *1. T.V.'s Absence Did Not Impact Mother's Rights*

A minor who is the subject of a juvenile court hearing is entitled to be present at the hearing and to be represented by counsel. (Welf. & Inst. Code, § 349, subds. (a), (b).)<sup>2</sup> If the minor is 10 years of age or older and is not present at the hearing, “the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire whether the minor was given an opportunity to attend. If that minor . . . wished to be present and was not given an opportunity to be present, the court shall continue the hearing to allow the minor to be present unless the court finds that it is in the best interest of the minor not to continue the hearing.” (§ 349, subd. (d).)

At the jurisdiction and disposition hearing, the juvenile court did not inquire on the record as to whether T.V. had been given the opportunity to attend. This is despite the fact that T.V. had indicated both at the detention hearing and later to the social worker that she wished to attend the next hearing. Mother contends this is both a structural defect and prejudicial error.

Mother lacks standing to raise this argument. “A party has standing to seek review of a judgment or order by demonstrating that the party is legally aggrieved within the meaning of Code of Civil Procedure section 902. [Citations.]” (*In re Jasmine S.*

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

(2007) 153 Cal.App.4th 835, 841-842 .) “ ‘To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court’s decision. A nominal interest or remote consequence of the ruling does not satisfy this requirement.’ [Citation.]” (*In re Holly B.* (2009) 172 Cal.App.4th 1261, 1265.)

Here, the requirement that the juvenile court inquire regarding the child’s notice and opportunity to attend is designed solely to benefit the child. The parent has no right to compel the child to attend. A child who is 10 or older may receive notice, yet choose not to attend the hearing. The child may also choose to waive a lack of proper notice.

Mother does not appear to be arguing that she was deprived of an opportunity to examine or cross-examine T.V. We note, however, that the statutory requirement that a child who is 10 or older be given notice, as well as the requirement that the juvenile court inquire regarding the child’s notice and opportunity to attend, have nothing to do with ensuring the child’s availability as a witness. Once again, the child could unilaterally choose to stay away. If Mother wanted T.V. to testify, she should have subpoenaed her. (See *In re Malinda S.* (1990) 51 Cal.3d 368, 383-385 [parent has the burden of subpoenaing witnesses whose statements are included in the social worker’s report], superseded by statute on another point as stated in *People v. Otto* (2001) 26 Cal.4th 200, 207.) It was the juvenile court (and later the social worker), not Mother’s counsel, who asked whether T.V. wanted to be present at the jurisdiction and disposition hearing. The juvenile court’s failure to inquire about her absence did not impact Mother’s rights.

Separately and alternatively, Mother also forfeited this argument by failing to raise it below. “[A] reviewing court ordinarily will not consider a challenge to a ruling if an

objection could have been but was not made in the trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected. [Citation.] [¶] Dependency matters are not exempt from this rule. [Citations.]” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted, superseded by statute on another point as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 962-963.)

We therefore conclude that Mother cannot raise this error in this appeal.

## *2. Sufficient Evidence Supports Removing T.V. from Mother’s Care*

Mother contends the juvenile court erred in ordering T.V. removed from her care because there was insufficient evidence to show that there was no other means by which to protect T.V. DPSS counters the court had before it clear and convincing evidence of Mother’s inability to properly care for T.V. and of the potential detriment to T.V. if she remained with Mother. We agree that the juvenile court had before it sufficient evidence to support the disposition order.

The decision to remove a child pursuant to section 361 is reviewed on appeal under the substantial evidence test. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) In resolving this question, we view the evidence in the light most favorable to the trial court’s determination, drawing all reasonable inferences in favor of the determination and affirm the order even if there is other evidence supporting a contrary conclusion. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Before the court may order a child physically removed from his or her parent, it must find by clear and convincing evidence that the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1).) A removal order is proper if it is based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal. 4th 735, 748, fn. 6.) The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*Diamond H.*, at p. 1136; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 536, citing *In re B.G.* (1974) 11 Cal.3d 679, 699.)

Here, the following evidence supports the juvenile court's conclusion that there was no reasonable means to protect T.V. from a risk of detriment without removing her from her mother's care. First, Mother was both abusing drugs in her daughter's presence and selling drugs out of the home they shared. T.V. reported having seen Mother smoking marijuana and stated that many people frequently come and go from the house, and deputies had previously arrested a suspect who admitted to having purchased methamphetamine from Mother. In addition, Mother exhibited the classic symptoms of being under the influence of methamphetamine when she was arrested. Second, the state of the home was not merely messy, but unsanitary, with dog and rodent feces in the kitchen, on the couches and in the sleeping areas, and rotted food in the kitchen and on top of the refrigerator. This was in addition to dirty plates and clothing throughout the

house and multiple extension cords, which the responding deputy described as “not appear[ing] safe,” and an uncovered electrical panel inside the home. We conclude that the state of the home exposed T.V. to a substantial risk of harm from disease and accident. We also conclude that Mother’s drug use and practice of selling drugs out of her home exposed T.V. to a substantial risk of harm, in that Mother was often not in a condition to care for her teenager when needed and she exposed T.V. to a parade of drug users going in and out of the home with cash and drugs.

Mother argues DPSS could have protected T.V. from Mother’s drug use, drug sales, and the state of the home by means other than removing T.V. We agree with both DPSS and the juvenile court that T.V. had to be removed for her own protection. This was not Mother’s first visit from child welfare workers, and would not be the first time she was offered services to address the issues that caused this dependency. In fact, the latest child welfare referral was only in June 2011, and included allegations that the home had no electricity, running water or food. At the team decision making meeting held on August 3, just three weeks prior to this detention, it was decided to leave T.V. in Mother’s care and to offer Mother mental health services because she disclosed having mental health issues. Further, in January 2010, Mother was cited for misdemeanor child endangerment (Pen. Code, § 273) when she was discovered asleep and under the influence of methamphetamine at the wheel of her vehicle, parked in the middle of the roadway with no lights on, while T.V. slept in the passenger seat. At that time, she was referred to “Family Preservation Court’s Center for Change.” Mother also had several child welfare referrals in 2006—one for being under the influence of methamphetamine

while caring for T.V. and living in a “speed house” when she was not moving around; one alleging that Mother and T.V. were living in a van; and another for not properly supervising T.V. As a result, toward the end of 2006, mother was provided with referrals for substance abuse services, parenting education, anger management and something called “Youth Accountability Team program.”

We disagree with Mother’s contention that these referrals have little to do with Mother’s current situation. We also disagree with Mother’s complaint that the social worker did not adequately describe either Mother’s participation in the services or how they were relevant to this detention. The point is that DPSS had already attempted to prevent T.V.’s removal by offering services for mother’s substance abuse, mental health, and parenting skills deficits, but these referrals had not resulted in a livable home environment for T.V.

In addition, Mother canceled or failed to show for every single appointment with the social worker prior to the jurisdiction and disposition hearing, which showed that she was not amenable to services that would help keep T.V. in the home. Given this lack of cooperation between detention and disposition, Mother’s argument that DPSS could have provided services to her that would have addressed her drug and home sanitation issues *in time and to a sufficient extent* to prevent the need for removing T.V. at the September 27, 2011, disposition hearing is unavailing. The juvenile court did not err.

### *3. ICWA Notice and Inquiry Requirements Not Fulfilled*

Mother contends: (1) DPSS failed to send ICWA notices to all of the tribes Mother identified; and (2) the notices that were sent lacked required information about T.V.'s ancestry that was available had DPSS fulfilled its duty to inquire.

#### A. ICWA Notice

In the detention report, the social worker stated Mother identified possible Indian ancestry as Navajo or Blackfoot. At the detention hearing, Mother's counsel made the juvenile court aware that Mother was claiming Indian heritage. In the "Parental Notification of Indian Status," Judicial Council Form, form ICWA-020, filed in the juvenile court on August 26, 2011, Mother identified the tribes in which she may be eligible for membership as "Blackfoot, Chirakia." DPSS sent Judicial Council Form, form ICWA-030, "Notice of Child Custody Proceedings for an Indian Child," by certified mail to the Bureau of Indian Affairs, the Blackfeet Tribe of Montana (Blackfeet), the Colorado River Tribal Council (Navajo), the Colorado River Indian Tribes (Navajo), the Fort Sill Apache Tribe of Oklahoma (Chiricahua), and the Navajo Nation. At the September 27, 2011, jurisdiction and disposition hearing the juvenile court found that "good ICWA notice" had been achieved.

Mother first argues DPSS should have also notified the three recognized Cherokee Tribes, based on Mother's ICWA-020 form. This is because Mother handwrote what

appears to be the word “Chirakia”<sup>3</sup> in the space where she was to list tribes in which she may be eligible for membership, and Mother contends the social worker should have asked Mother if she meant that she may have Cherokee heritage. DPSS counters that mother was referring to the Chiricahua band of Fort Sill Apaches of Oklahoma, to which DPSS did sent notice

“ ‘The Indian status of the child need not be certain to invoke the notice requirement. [Citation.]’ ” (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 254.) “ ‘[O]ne of the primary purposes of giving notice to the tribe is to enable the *tribe* to determine whether the child involved in the proceedings is an Indian child. [Citation.]’ ” (*Id.* at pp. 254-255.) Former California Rules of Court, rule 1439, now section 224.2, subdivision (a), “impos[es] on the court an affirmative duty to ‘inquire whether a child for whom a petition under section 300. . . has been . . . filed is or *may* be an Indian child.’ [Citation.] Further, under [section 224.3, subdivision (b)(1)], ‘[t]he circumstances that may provide [reason to know] the child is an Indian child include’ the receipt of information from a party or other source ‘*suggesting* that the child is an Indian child.’ ” (*Id.* at p. 256.) “Synonyms for the term *suggest* include ‘imply,’ ‘hint,’ ‘intimate’ and ‘insinuate.’ (American Heritage Dict. (college ed. 1981) p. 1287.)” (*Id.* at p. 259)

Based on this very broad reading of the duty to notify Indian tribes whenever a parent suggests, implies or even hints that a minor may be a member of a particular Indian tribe, we reluctantly conclude that mother’s inclusion of the word “Chirakia” on the ICWA –

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<sup>3</sup> Mother asserts the word appears to be “Chirakis.” DPSS asserts the word appears to be “Chirak.”

020 form was, just barely, enough of a hint that she was claiming possible Cherokee heritage to trigger the duty to notify the three Cherokee Indian tribes.

*B. ICWA Inquiry*

Mother's second ICWA argument is that DPSS failed to include any information in the ICWA-030 notice to the tribes about T.V.'s grandparents or great grandparents, and that this information was available to DPSS if only it had fulfilled its duty to inquire of relatives about T.V.'s Indian heritage. The notice form included information about Mother, along with the name and birth date of T.V.'s father. The spaces on the form for information about T.V.'s grandparents and great grandparents were filled in "No information available."

Under California law, the social services agencies and the juvenile courts have "an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 . . . is to be, or has been, filed is or may be an Indian child in all dependency proceedings . . . if the child is at risk of entering foster care or is in foster care." (§ 224.3, subd. (a).) Circumstances that indicate the child is an Indian child include information that the child is a member of a tribe or eligible for membership, or that one or more of the child's biological parents, grandparents, or great-grandparents are or were members of a tribe. (§ 224.3, subd. (b)(1).) The social worker must interview the parents and other persons expected to have information about the child's status or eligibility. (§ 224.3, subd. (c).)

Federal regulations require that the notice to the tribes include, among other things, "All names known, and current and former addresses of the Indian child's biological

mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or other identifying information.” (25 C.F.R. § 23.11(d)(3) (2010).)

The record shows that Mother did not make herself available to the social worker, so Mother cannot complain that the social worker did not ask her for more information about her Indian heritage, specifically the names and other required information about T.V.’s grandparents and great grandparents. However, as Mother points out, the social worker also had access to 14-year-old T.V., who at least should have been asked if she knew the names of or other information regarding her mother’s family. In addition, DPSS had information regarding a local great uncle, a long-time family friend in Texas, and another family friend who lives on the Morongo reservation, each of whom wanted to be considered for placement and could have been asked about T.V.’s grandparents and great grandparents. The record does not indicate that the social worker inquired of any of these possible sources, as required by section 224.3, subdivision (c). Although we are loath to allow Mother to benefit from her own failure to make herself available to the social worker for interview, we can only conclude that the social worker did not fulfill the duty to interview T.V., the great uncle, or the two family friends to attempt to obtain the information required to be included on the ICWA-030 form, if available.

The juvenile court and DPSS did not fulfill their inquiry and notice duties. Thus, the matter must be remanded for proper ICWA compliance.

## DISPOSITION

The jurisdiction and disposition orders of the juvenile court are conditionally vacated, and the matter is remanded to the juvenile court with directions to order compliance with the ICWA inquiry and notice provisions. If, after proper inquiry and notice, no response is received from a tribe indicating T.V. is an Indian child, the orders shall be reinstated. If a tribe determines the child is an Indian child, the juvenile court is ordered to conduct a new jurisdiction and disposition hearing in conformity with all provisions of ICWA. In all other respects the orders are affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

KING

J.